

*United States Court of Appeals  
for the Second Circuit*



**BRIEF FOR  
APPELLANT**



76-1474

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

DOCKET NO. 76-1493

UNITED STATES OF AMERICA,  
APPELLEE,

v.

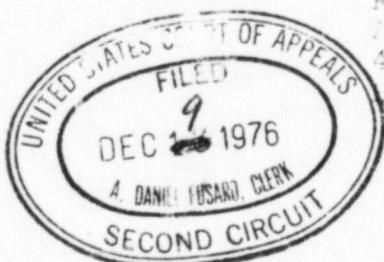
RICHARD JEAN, ET AL.

APPELLANTS

APPELLANTS' CONSOLIDATED APPEAL FROM  
JUDGMENTS OF THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF APPELLANT  
RICHARD JEAN

RICHARD S. CRAMER  
ASSISTANT FEDERAL PUBLIC DEFENDER  
450 MAIN STREET  
HARTFORD, CONNECTICUT 06103  
ATTORNEY FOR APPELLANT



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STATEMENT OF THE CASE

The defendant, Richard Jean, pleaded nolo contendere to a one-count Information alleging a violation of Title 26, United States Code, Section 7262 (26 U.S.C. § 7262), for failure to pay to the District Director of Internal Revenue, Hartford, Connecticut, the special occupational tax imposed by Title 26, United States Code, Section 4411 (26 U.S.C. § 4411), upon those persons in the business of receiving and accepting wages, as defined in Sections 4421(1) and (2) of Title 26, United States Code. Upon this plea the district court, The Honorable M. Joseph Blumenfeld, entered a Judgment of guilty and imposed a fine of One-Thousand Dollars (\$1,000.00), from which this appeal is taken. Execution of the payment of the fine has been stayed pending the appeal.

Prior to his plea, the defendant, joined by his five co-defendants, moved to dismiss the Information on grounds that the statutory framework of Chapter 35 of the Internal Revenue Code concerning the payment of a special occupational tax (herein a "wagering tax"), compels disclosure of incriminating information in violation of the Fifth Amendment privilege against self-incrimination. The motion challenged the constitutionality of Chapter 35 on its face and as applied. No evidentiary hearing was held on the as-applied challenge, and appellant Jean appeals only from the denial of his motion to dismiss by the lower court, rejecting the facial constitutional challenge by written memorandum (App. 4-11).

STATEMENT OF ISSUES PRESENTED  
FOR REVIEW

I. Whether the Constitution requires a grant of use-derivative use immunity to a wagering taxpayer who provides information by compulsion of prosecution for failure to comply with the tax statute.

II. If use-derivative use immunity is not required, whether the current disclosure scheme of the wagering tax statutes nonetheless subjects the taxpayer to unconstitutional burdens upon his Fifth Amendment privilege against self-incrimination, requiring the conviction based upon the statute to be set aside.

STATEMENT OF FACTS

Since the defendant below appeals only the rejection of his facial constitutional challenge, no determinative facts are associated with his particular case. To the extent that a factual background is appropriate, it has been incorporated into section II of the Argument of co-defendant Ferrigno as an explanation of the statutory scheme of the wagering tax laws.

ARGUMENT

The defendant Jean hereby adopts and incorporates  
by reference the argument of co-defendant Ferrigno in No.  
76-1500.

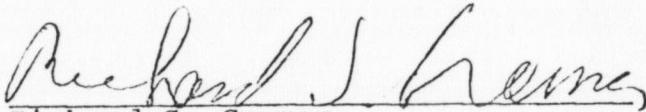
DEFENDANT-APPELLANT  
RICHARD JEAN

BY

*Richard S. Cramer*  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing Appellant's Brief and Appendix were hand-delivered to the office of Paul E. Coffey, Esquire, Strike Force Attorney, Office of the United States Attorney, 450 Main Street, Hartford, Connecticut 06103, this 8th day of December, 1976.

  
Richard S. Cramer  
Assistant Federal Public Defender